procedures for defective or incomplete applications."[10] The NPRM further proposes to allow applicants 30 days (from the date of notification) to revise or amend a defective or incomplete application that has been accepted for filing by the ULS.[11] The FCBA supports these proposals.

The Commission also proposes to allow applicants to request confidential treatment of certain sensitive application materials submitted by means of the ULS.[12] Under the Commission's proposal, applications that include a request for confidential treatment will be inaccessible by the public, and Commission access will be limited to key personnel possessing special user names and passwords.[13] Furthermore, the Commission proposes that should it deny a request for confidential treatment, it will notify the applicant and give them the option of deleting the sensitive materials from the ULS database.[14] The FCBA supports these proposals. [15] The FCC also states that it has fashioned the ULS to receive and protect application information that is confidential. NPRM at ¶ 54. The FCBA supports this action and urges the FCC to take appropriate measures to protect confidential information. In particular, the FCBA proposes that the agency maintain a separate ULS site or manual site to receive this information. The applicant could simply cross-reference the two

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10 NPRM at ¶ 53.

11 *Id.*

12 NPRM at ¶ 54.

13 *Id.*

14 *Id.*

15 The Commission should also give applicants the opportunity to request confidential treatment of material after it has been submitted. All of us have hit a send button on an e-mail before we wanted to; where confidential information is involved such inadvertent action could have an untoward effect and the Commission should give applicants the opportunity to cure.

submissions for the Commission's convenience. This proposal would ensure that an applicant who inadvertently neglects to check a "confidential" box is not severely prejudiced because the general public would obtain the immediate ability to review and download the information.

D. The FCC Must Clarify the Status of the Map Filing Requirements for Cellular Licensees

At recent public forums, Commission staff have demonstrated the impressive map-generating capabilities of the ULS. As the FCBA understands it, the ULS is capable of generating any number of maps from the technical data contained in an ULS filing. Toward this end, it seems that the Commission may no longer desire wireless licensees, particularly cellular licensees, to submit maps with their ULS filings. It is unclear, however, whether the NPRM fully contemplates elimination of map filing requirements for cellular licensees. Specifically, the NPRM proposes to retain existing Section 22.929(c), which imposes a map filing requirement on cellular telephone applications, but simultaneously eliminates Section 22.953 — the rule section containing map size and formatting specifications. Given the capabilities of the ULS, the FCBA requests that the map filing requirement for cellular licensees be clarified to the fullest extent possible.

VI. The FCBA Supports The FCC's Proposals With Respect To Licensing And Technical Data

A. The FCBA Supports the Commission's Efforts to Minimize the Technical Data Reporting Burdens of Geographic Area Licensees

The Commission "proposes to examine the technical reporting requirements for all geographic area licensees with a view toward equalizing, as much as possible, the reporting burden on such license holders."[16] Toward this end, the Commission proposes that, at a minimum,

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[16] NPRM at ¶ 78.

applicants for geographic area licenses in the various wireless services should provide site specific technical data when: 1) an environmental assessment filing is required, 2) international coordination is needed, and 3) when towers will extend more than 200 feet above ground or will be located in close proximity to an airport. The FCBA supports the first two of these proposals, but strongly opposes the third to the extent that it would require anything further than the Commission's existing Form 854 antenna structure registration filing requirements.[17] Other technical data reporting requirements for geographic area licensees should be retained only to the extent that they aid coordination with adjacent market licensees, or are needed to facilitate licensing in services with both geographic and site-by-site license holders.

B. The FCBA Supports the Commission's Proposed Use of Notification/Certification Filings in Lieu of Informational Filings

The Commission proposes to replace many data or other informational requirements with either electronically-filed certification or notification filings.[18] The FCBA supports this proposal. Electronically-filed certification and notification procedures constitute an appropriate and beneficial licensing approach that could replace, and alleviate the burden of, many current information filing requirements.

C. The FCBA Supports the Proposed Elimination of Technical Antenna Information for Public Mobile Radio Service and Fixed Microwave Service Licensees

The NPRM proposes to eliminate the reporting of certain technical antenna information that

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[17] 47 C.F.R. §17.4.

[18] NPRM at ¶ ¶ 80-81.

it previously used to calculate service contours and cellular geographic service areas.[19] The Commission observes that due to recent changes in how these areas are calculated, such antenna information is no longer needed. The FCBA supports this proposed elimination.

In addition, the FCBA supports the proposed elimination of certain formatting requirements for Cellular Radiotelephone Service unserved area applications.[20] The FCBA agrees with the Commission's conclusion that such requirements are inconsistent with an electronic filing environment,[21] and should thus be eliminated when unserved area applications are filed electronically.

Finally, the FCBA supports the Commission's proposal to eliminate the requirement that microwave applicants submit superfluous technical data such as: type acceptance information, line loss values, channel capacity, and baseband signal type.[22] The FCBA agrees with the Commission's conclusion that inasmuch as licensees are increasingly responsible for interference coordination, Commission collection of this data is unnecessary.[23] In light of this goal, the FCBA urges the Commission to consider eliminating similarly extraneous information such as: transmitter manufacturer name, digital modulation rate, digital modulation type, median receiver signal level, antenna manufacturer name, and antenna model number.

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19 NPRM at ¶ 82.

20 NPRM at ¶ 83.

21 *Id.*

22 NPRM at ¶ 84.

23 *Id.*

VII. The FCC Should Not Require The Mandatory Electronic Filing Of Pleadings And Should Not Disallow Letter Filings

The Commission (NPRM ¶26) proposes to allow the electronic filing of pleadings and informal requests concerning wireless radio service applications and seeks comment on whether to allow other WTB pleadings not associated with an application or docketed proceeding to be filed electronically via ULS. FCBA supports these proposals, provided the option is preserved of filing and pleadings and informal requests in paper form. The Wireless Bureau should encourage electronic filing but should not be impervious to those lacking the correct computers and appropriate software who may nonetheless have standing to file pleadings.

The FCC also seeks comment on whether it should disallow "letter request" filings for applications, modifications and various other purposes, arguing that the use of forms is less burdensome to licensees than letter requests (NPRM, ¶ 27). The FCBA again encourages the use of electronically filed forms for those purposes but opposes the mandatory discontinuance of all letter requests.

We believe that if it becomes more efficient and convenient to shift to electronically filed forms to achieve the purposes now served by letter filings that applicants will do so. But we do not think it shuld be made mandatory, as that would deny licensees, particularly small licensees, the necessary flexibility to conduct their businesses.

Administrative efficiency is certainly a vital concern of the FCC. But it should not be the FCC's sole concern. A small paging operator who needs an emergency STA should be able to file a letter and explain his problem to a knowledgeable FCC employee. That basic relationship should be preserved.

VIII. The Commission's Proposed Standards for Defining Major and Minor Amendments and Notifications Should Be Modified To Reflect The Distinctive Qualities of Different Services

The Commission has acknowledged that the distinction between major and minor filings has significant procedural consequences in the application process. Licensees may make minor modifications as a matter of right without prior Commission approval. In contrast, all major modifications require prior Commission approval and are treated as new applications for determination of filing date, public notice, and petition to deny purposes.[24] This obviously is a very significant distinction for licensees in terms of both resources and exposure to challenges from competitors.

The Commission seeks comment on its proposal to create one set of universal standards for major and minor filings that would apply to all wireless radio services. While the FCBA understands the Commission's desire to simplify and streamline its administrative procedures, adoption of the proposed rules in their current form would have the unintended effect of creating additional onerous requirements for services that were not previously subject to them. In its effort to make the modification process uniform, the Commission apparently has overlooked that, in some instances, licensees would be required to obtain prior Commission authority for changes that until now were considered routine and are presently "minor" under the Commission's Rules.

For example, under existing rules, public mobile licensees constructing or altering facilities that would exceed certain height and other guidelines must notify the Federal Aviation Administration ("FAA") and must file a request for antenna height clearance and marking and

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[24] See proposed new Section 1.947, 47 C.F.R. §1.947.

lighting specifications with the Commission.[25] This is, in many services, considered a minor modification, especially if there is no change in authorized service areas. Pursuant to proposed Section 1.929(b)(5), however, any modification or amendment requiring notification to the FAA would be considered major.[26] This means that before the construction could be undertaken, the application would have to be placed on public notice, all competitors would have the opportunity to file petitions to deny, and the licensee would have to await a Bureau grant and potentially administrative and judicial appeals. Not only is this onerous for licensees, it would increase significantly and needlessly the Commission's administrative and paperwork burden.

Similarly, the Commission's new rules provide that any addition or change in frequency is considered major.[27] Cellular and PCS licensees constantly "change" frequencies throughout a given geographic area to take into account customer growth, the needs of adjacent licensees, and the reevaluation of site plans. Section 22.905(b) contemplates this activity and provides that licensees may use any channel pair from the assigned channel block at any transmitter location subject to prior coordination.[28] While the Commission undoubtedly did not intend that every change in a licensee's frequency use plan would require prior approval, the proposed rules could be interpreted to require

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25 47 C.F.R. § 22.163(c).

26 See proposed new Section 1.929(b)(5), 47 C.F.R. §1.929(b)(5).

27 See proposed new Section 1.929(b)(2), 47 C.F.R. §1.929(b)(2).

28 47 C.F.R. § 22.905(b).

this. The Commission should therefore clarify that frequency changes within an assigned channel block do not even require FCC notification.

Also, under the Commission's proposed rules "any change in latitude or longitude" would be considered a major change for cellular or paging stations, while for fixed microwave stations, such a relocation would be considered minor unless the change exceeded five seconds in latitude or longitude."[29] It is not apparent why cellular and paging licensees should be subject to more requirements than their microwave counterparts when making the same change. Also Part 22 licensees are not presently required to file major modification applications unless a proposed location change would expand their authorized service areas. There is no good reason to change this policy. Also, as discussed below, there are often mistakes in the Commission's databases and the transition from NAD27 to NAD83 datum is likely to result in many coordinate "changes." The Commission could significantly reduce the burden on itself and licensees if minimal changes in latitude and longitude were considered minor.

If the Commission wishes to meaningfully streamline its modification rules, it must take into account both the differences and similarities between the many services in the wireless industry. Specifically, the Commission should make clear in its new rules that it does not wish to make into major amendments changes in operations which are minor under present service specific rules. Uniformity for uniformity's sake would only serve to increase the obligations and efforts of licensees and the Commission.

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[29] Compare proposed 47 C.F.R. §1.929(c)(3) with id. at §1.929(d)(1).

IX. The Commission's Proposed Collection Of Ownership Information Is Overbroad And Unduly Burdensome

A. FCC Form 602 Seeks Disclosure of Information Not Related to Ownership or Control

The NPRM and proposed Form 602 propose to require filers to disclose a great deal of information for the purported purpose of identifying holders of direct and indirect ownership interests in the licensee and its controlling parties.[30] Notwithstanding the FCC's expressed intent, however, the proposed Form 602 goes well beyond identifying those with ownership interests or having control over the filer.

The Form 602 requires filers to disclose extensive information regarding "any party holding 10 percent or more of any class of ... [ ] warrants, options, or debt securities of the applicant." These interests, however, do not constitute current ownership interests in the filing entity. With respect to warrants and options, the Form 602 breaks with well-established Commission policy that purchase options and other potential future rights are non-cognizable for current attribution purposes. *See,* Letter to Richard R. Zaragoza from Roy Stewart, Chief, Mass Media Bureau, DA 98-784, rel. April 24, 1998; 1998 FCC LEXIS 2035, *citing, WWOR-TV, Inc.*, 6 FCC Rcd 6569, n.13 (1991); *Woods Communications Group, Inc.*, 12 FCC Rcd 14042 (1997). With respect to debt securities, it is a basic principle that debt securities are not "equity" or "ownership" interests.[31] Holders of debt

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30 See NPRM, ¶ 45 (indicating that FCC Form 602 will be used to report ownership information); Form 602 Instructions, p. 2 ("Purpose of Form: The purpose of this form is to collect ownership data pertaining to the applicant for the proposed authorization.")

31 *See* Black's Law Dictionary 363 (5th ed. 1979) (Debt defined as "A sum of money due by certain and express agreement. A specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of

securities do not have equity interests in the debt-issuing entity -- they are merely "lenders" entitled to be repaid a specified amount at a specified time. In light of the fact that holders of warrants, options and debt securities cannot be said to have current actual ownership interests in the filer, the filer should not be required to disclose the information requested by the Form 602 with respect to these entities. Proposed Form 602 should be revised to eliminate reporting obligations with respect to these non-cognizable, non-equity interests.

B. The Commission Should Request Taxpayer Identification Number Information Only from Licensees or Applicants

Form 602 requires the filer to provide the Taxpayer Identification Number, Social Security Number or Employer Identification Number, whichever is applicable, (collectively referred to as the "TIN") for "each officer, director, attributable stockholder, or key management personnel of the applicant identified in Items 3-11... [and] any FCC-regulated business 10 percent or more of whose stock, warrants, options, or debt securities are owned by such person or entity." FCC Form 602 Instructions, p. 6 at Item 12. The FCBA submits that this reporting obligation is unduly burdensome and should be eliminated.

The form requires the collection and reporting of information not previously required with respect to all of the persons or entities encompassed by the proposed obligation. The burden on filers attempting to collect this information will far exceed any conceivable benefits. Filers will be required to contact multiple individuals and businesses, many of which will have only a tangential relationship to the filer. The filer then will be required to expend additional resources identifying

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creditor to receive and enforce payment." *Citing, State v. Ducey*, 25 Ohio App. 2d 50, 266 N.E. 2d 233, 235.)

and contacting appropriate representatives within business organizations who will have access to TIN information regarding the entity. Even if the filer is able to complete these steps, the filer then must request TIN information from individuals and business entities, many of which typically would prefer not to disclose such information.[32] If the filer is unable to complete any of the foregoing steps, the filer will be unable to submit a single application — even where the filer is able to provide a complete and accurate report of its ownership and control. Surely, this cannot be the result intended by the Commission.

Further, while the Form 602 contains a cursory statement to the effect that this TIN information is being collected in conjunction with the Debt Collection Improvement Act of 1996 ("DCIA"), the FCBA respectfully submits that the dragnet approach proposed by the FCC is not required by the DCIA. The DCIA was enacted in order to, among other things, "maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools ..." 31 U.S.C. § 3322 note. To that end, TIN information is collected relating to individuals or business entities which are entitled to benefits or compensation from the Government in order to assist the government in locating assets to "attach" in connection the satisfaction of debts owed to the Government by those individuals or entities. In the case of FCC licenses, the relevant entity, for purposes of determining who has received and is enjoying a government benefit, is the applicant or licensee — not businesses which are unrelated to the filer (but with respect to which TIN information must be provided on the Form 602 because, *e.g.*,

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[32] It might be noted that the Commission's requirement of collecting TINs from third parties whose connections with filer are remote is at odds with the Commission's previous concern to preserve the confidentiality of TINs.

a director of the filer holds 10 percent of the debt securities of the other company). Thus, the FCC is not compelled by the DCIA to request such information. Requiring the disclosure of TIN information regarding any individual or entity other than the applicant or licensee is an unwarranted expansion of the information collection authority conferred by the DCIA. In light of the foregoing, the FCBA respectfully submits that the Form 602 should be revised to request TIN information solely with respect to the filer.

C. The Format of Proposed Form 602 Creates Substantial Administrative Burdens

Preparation and filing of the proposed Form 602 will consume vast amounts of time and money. According to the form's instructions, filers will be required to file separate Forms 602 for each person or entity disclosed on the Form 602 in order to respond to question numbers 3 through 12 for each. For complex business organizations with multiple officers, directors, key management personnel, shareholders, debt security holders, subsidiaries, intermediary companies, and affiliates, the obligation to file a separate Form 602 for each identified person or entity would result in a substantial filing. If such a filing were submitted manually, the stack of associated paper would be breathtaking. Whether submitted manually or electronically, the resources consumed by the preparation of such filings would far outweigh any possible benefit of employing the Form 602 in its proposed format.

In light of the foregoing, the FCBA respectfully submits that the Commission should modify the proposed Form 602 to provide a table containing designated areas in which information in response to items 3 through 12 could be provided. The form also should be expanded to include continuation sheets for such table. In this way, the filer could utilize as much or as little of the table as necessary to reflect its ownership and control. The result would be that a single Form 602, rather

than several, could be filed to reflect the complete ownership and control of a filer. In the alternative, the FCBA respectfully requests that the Commission permit filers to "opt out" of filing multiple Forms 602 and to instead create and file their own tables containing the information requested by items 3 through 12 with respect to each person or entity identified.

X. The Commission Should Clarify Aspects Of Its Proposed Transfer And Assignment Forms

The NPRM (¶ 63-67) proposes to consolidate all transfer and assignment rules for wireless services in Part I of the FCC's Rules and to eliminate inconsistencies between CMRS and microwave transfer and assignment procedures. To that end, the NPRM proposes that two ULS forms, Form 603 for assignments of license, and Form 604 for transfers of control, be substituted for all existing wireless assignment and transfer forms. The FCBA does not oppose the form consolidation.

FCBA supports the NPRM's proposal (¶ 66) that there be a post-consummation notification to the FCC of the consummation of an assignment or transfer prior to the FCC's changing its database to reflect a grant. The Commission's procedure (since August, 1996) of automatically changing its database to reflect granted microwave assignments and transfers whether or not those transactions were consummated has caused considerable difficulties. A post-consummation electronic filing procedure to advise the Commission of such consummations, by accessing a previously filed Form 603 or 604, should be a considerable improvement.

The FCC has proposed the mandatory subsequent filing of Forms 603 or 604 following pro forma assignments or transfers which do not require prior Commission consent under its present forbearance policy. However, if the FCC retains the option of making letter filings, which we have

endorsed above, we recommend that the present flexible and efficient procedure of allowing licensees to report pro forma assignments and transfer by subsequent letter also be retained.

The FCBA would also offer the following specific comments on the proposed Forms 603 and 604 appended to the NPRM.[33]

- The instructions to both forms should be modified to note that CMRS applicants may file the forms to report a pro forma assignment or transfer which has already taken place pursuant to Section 22.137 of the rules.

- The instructions to Questions 5 and 29 of Form 603 and Question 4 of Form 604 should make it clear that the "Taxpayer Identification Number" is the same as the "Social Security Number" for individuals and the "Employer Identification Number" for other entities.

- Question 27 of proposed Form 603 and Question 26 of proposed Form 604 are, in our judgment, unclear.

- With respect to Question 27 of Form 603, dealing with assignments of license, it is stated in the form's instructions that if the "stock" of the licensee or controlling party is to be "assigned" to another entity, the question is to be answered "S." However, an "assignment" of the "stock" of a licensee to another party, as opposed to the assignment of the FCC license and other licensee assets, to such a party is usually regarded not as an assignment, but rather as a transfer of control of the licensee. The wording of this question will inevitably cause confusion. It would be preferable

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[33] For some months, an ad hoc FCBA Committee has been at work attempting to generate a proposed transfer/assignment form which could be used for all FCC licenses. These comments may reflect some of the ideas being developed by that Committee, but are not intended to foreclose that committee from presenting additional options or proposals which are not reflected in these comments.

simply to allow applicants to describe what they are proposing to do in a short exhibit, relying on counsel's knowledge of the traditional distinctions between assignments and transfers.

- Also, the instructions to Question 27 of Form 603 and Question 26 of Form 604 only appear to require an explanatory exhibit if the answer to the questions asked is "O," for "other." The Commission should clarify this point.

- In our view, an exhibit should always be filed explaining the nature of a proposed or (in the case of pro forma CMRS transaction) a previously consummated assignment or transfer of control. We believe that it is essential to the fulfillment of the FCC's supervisory responsibilities that it have an adequate understanding of transactions which Section 310(b) of the Communications Act obliges it to pass upon.

- The alien ownership questions (Questions 52-56, Form 603, Questions 28-32, Form 604) should in our view, be phrased differently. Items 52-55 and 28-31 ask whether the assignee/transferee is a foreign government or its representative, an alien or his/her representative, a foreign corporation, or a domestic corporation more than one fifth of which is owned by aliens. However, as is noted in the instructions to both forms, a license cannot now be granted to such entities, pursuant to Sections 310(b)(1), (b)(2), and (b)(3) of the Communications Act.

- It would be better, we submit, to ask proposed licensees and transferees to state that they are in compliance with those parts of the statute, and provide an opportunity to explain the response if necessary. Questions 56 (Form 603) and 32 (Form 604) are, however, valid questions, as licensees may under certain circumstances now have parent companies which have in excess of 25% foreign ownership.[34]

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[34] See *In the Matter of Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order on Reconsideration, 12 FCC Rcd 23891, 23940-23942 (1998).

The FCBA believes that there is an overabundance of proposed assignee and transferee "certifications" included in both forms. The general principle ought to be that the FCC should only include those certifications in application forms which are required by statute. Licensees are subject to the FCC's rules and must comply with those rules whether or not they have "certified" that they will. Thus, adding to the number of certifications presently required, as these forms do, is of questionable value. We would suggest that the FCC should at least eliminate from Form 603 proposed assignee certifications 2, 5, and 7 and proposed transferee's certifications 3 and 7 from Form 604.[35]

- Schedules, A, B, and C to Form 603 (Assignment Schedule For Auctionable Services, Petition and Disaggregation Schedule, and Undefined Geographic Area Schedule) need to be revised to take account of how cellular, as opposed to PCS, partitions work and should best be described.

- Schedule A, instead of referring to "auctionable services" should refer to "previously auctioned systems" for they are the only systems to which the questions on the form are relevant.

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[35] Licensee "access" to equipment, discussed in certification 3 of both forms, is best handled by rule.

The certification which is numbered 5 on Form 603 and 7 on Form 604 is not comprehensible. It seems to alternate between having a licensee assume a previous licensee's obligations and license conditions and relieving the new licensee of said obligations and conditions. A conscientious assignee/transferee will simply not know what he/she is certifying to. It should be dropped.

Assignee's certification 7, dealing with the assignee's assumption of the licensee's build out requirements, is sometimes inaccurate, especially where a CMRS construction requirement has already been met. It could be made compatible with the rules by adding the phrase "to the extent applicable" but that defeats the point of a certification, since it would not always apply.

None of the questions on Schedule A will be relevant to partitions of cellular systems since those systems were licensed by lottery (or will have, in the case of a very few unserved areas, have been licensed by auctions without any small business preferences). Accordingly, the instructions should make it clear that cellular licensees may simply fill in a "Not Applicable" box which should be added to the form.

- Schedule B should be clarified. Its fundamental distinction is between "defined" and "undefined" areas to be partitioned. But there is no such thing as an "undefined" area to be partitioned, since all licensees are originally licensed to serve some defined area, such as MTAs, BTAs RSAs or MSAs in the PCS and cellular services. The FCC should clarify what it means by "undefined areas" to be partitioned.

- Also, the Commission should allow cellular licensees not to answer the questions regarding spectrum disaggregation (which do not apply to them) or coverage requirements. The build out periods have expired in almost all cellular markets and cellular licensees no longer have minimum coverage requirements in any case.

- Schedule C should also be clarified once the Commission makes clear what it means by an "undefined" area.

The problems of these schedules illustrate the perils of compressing the rules for many services into only two forms. It is critical that the forms provide ways of allowing applicants to skip items which are not relevant to their services or individual licensee qualifications and explain what it is they are trying to accomplish.

- There is one final difficulty about the transfer/assignment process in the ULS electronic filing context, namely how the FCC will coordinate the filing of the transferor/assignor and

transferee/assignee portions of the applications from remote locations. At present, counsel for the two sides simply exchange their respective portions of the applications. How this will work from remote locations in an electronic filing context is not clear and should be focused upon by the FCC, the FCBA and other interested parties. It is one more reason for the FCC to proceed more slowly than it is now proposing to do in implementing ULS.

XI. Additional Issues

A. Frequency Coordination of Amendment and Modification Applications.

The NPRM proposes to amend section 101.103 of the rules to require frequency coordination only for those amendments and modifications making "major" changes to the technical parameters of their system. NPRM at ¶ 50. While the FCBA supports the flexible approach proposed by the agency, the FCC should consider that it has adopted definitions of "major" and "minor" applications for other purposes as well. The Commission's approach for defining each term should be consistent for each instance in which the term is employed.

The Commission should also take into consideration the differences between Part 90 coordination and Part 101 coordination systems in its new regulations. Part 101 coordination is largely applicant-controlled, while Part 90 frequency coordinators are specifically authorized by the agency and possess broad, quasi-governmental powers. The NPRM does not state how the Commission will integrate the ULS scheme with existing Part 90 frequency coordination requirements. For example, the rules should specify whether the applicant or the frequency coordinator will be notified in the event of technical problems with an application. In the past, the FCC has notified the applicant of such problems; however, the agency has recently begun to send application return notices directly to coordinators, without providing any notice to the applicant. In

that case, the Commission should clarify that the applicant will not be held responsible for failure to timely submit amended information to the FCC. In addition, the Commission should seek to conform its coordination requirements for Parts 101 and 90, at least in terms of application processing.

B. Returns and Dismissals of Incomplete and Defective Applications

The FCC proposes to permit applicants to correct or amend an application that contains errors during a 30-day time period. NPRM at ¶ 53. The FCBA agrees with this proposal, but cautions the agency to adopt procedures to ensure that manual filers are not prejudiced by a simple mistake that would otherwise have been detected had the applicant employed the electronic filing method. The FCBA also urges the Commission to continue to rely on informal contacts with applicants to correct minor errors. On its *Customer Service Standards* homepage at its internet website, the Wireless Telecommunications Bureau states that:

> Where rules permit, if your application contains errors that can be resolved by telephone, we will telephone you. When not permissible or all errors cannot be resolved by telephone, your application will be returned, but only after a complete review. Errors or omissions will be clearly indicated.

The FCBA urges the agency to continue to comply with its stated customer service goals by contacting applicants informally for minor corrections.[36] In many cases, such as an obvious

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[36] The NPRM attempts to distinguish between those amendments that will be deemed "major" and may not be accepted, and those amendments that are minor. However, in many cases, an amendment to an application to correct a typographical error (such as incorrect geographic coordinates), will be deemed major even though the applicant's proposed system is not different and the correct information may be gleaned from the "four corners" of the application (*e.g.*, street address, exhibits, maps, etc.). In that case, the rejection of an amendment deemed "major" would be tantamount to a letter-perfect filing standard.

typographical error, the agency should simply correct the information without notification to the applicant. The FCBA is concerned that the Bureau not re-create the failed and litigation-generating "letter-perfect" standard once used to process FM radio applications and cellular mobile telephone applications. While ULS processing should reduce errors, the Bureau should not punish applicants for the occasional failure to produce letter-perfect applications.

In the event that an application is returned, the Bureau should not be permitted to return a re-submitted application a second time for errors or issues that were discoverable during the agency's initial review of that application. This prohibition will provide the Bureau with an incentive to closely screen applications to avoid duplicate or repetitive requests for information. Similarly, the FCC should clarify that the Bureau is not permitted to return or dismiss applications based on informal requirements, not otherwise specified in the rules or application forms.[37]

C. Procedures Regarding Reinstatement Applications

The FCC proposes to eliminate the ability of licensees to seek reinstatement of expired authorizations beyond the 30-day limit currently permitted in certain portions of the Commission's rules. NPRM at ¶ 56. The basis for the FCC's proposal is the agency's intention to provide pre-expiration warnings to all licensees. The Commission reasons that applying for renewal should therefore be easier under its new ULS scheme. Id. The FCBA opposes the Commission's proposal.

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[37] For example, the Bureau often requires licensees to submit a construction certification letter with applications seeking assignment of land mobile radio authorizations. However, neither the FCC's rules, nor its standard application forms require the routine submission of such information. Thus, many applications are returned to unsuspecting applicants who are unaware of the informal requirement.

The agency's proposal, if adopted, would require "automatic cancellation" even in cases where the licensee was not at fault for the failure to timely seek renewal. For example, the licensee may have computer difficulties or mail delivery problems and not receive the Commission's pre-expiration warning. Alternatively, a licensee may have an emergency which prevents the timely submission of the application for renewal. In either case, the paramount regulatory consideration should be whether the licensee has fulfilled its obligations as a licensee. Automatic cancellation is an undeserved penalty for those licensees who have otherwise met their obligations, but failed to timely seek renewal. Also, it will inevitably create new administrative burdens for the Commission as licensees petition for reinstatement and appeal denials of it.

The Commission states that licensees may petition the Commission to reconsider its actions upon automatic cancellation. NPRM at ¶ 57. That uncertain remedy, however, does not address the fact that the licensee would be immediately without operating authority until the Commission resolves the petition. Because the agency often takes months, or years, to resolve such petitions, a prudent licensee would likely seek temporary operating authority, or a "stay" of the automatic cancellation provision. See 47 C.F.R. § 1.102(b)(2) (1997) (decision by delegated authority not automatically stayed by the submission of a petition for reconsideration). Thus, the scheme proposed by the FCC would actually have the opposite effect of that intended -- pleadings and petitions would increase, not decrease. The much simpler and more equitable course of action is to permit the licensee an additional 30-day period in which to seek automatic reinstatement of its FCC authorization.

D. Construction and Coverage Verification

The Commission proposes to adopt a uniform construction verification system for all

licensees. NPRM at ¶ 60. The system would automatically send a notification to the licensee, either by electronic or regular mail. If a licensee fails to provide the information requested, within 15 days after the applicable deadline, the FCC states that the license will cancel and a subsequent Public Notice will issue, announcing the termination of the authorization. Id. at ¶ 61. Similar to its concerns relating to the possible elimination of the 30-day license reinstatement period, the FCBA urges the Commission not to elevate form over substance with respect to construction verification. Again, the FCBA notes that the agency's concern should be with the licensee's substantive compliance; the FCC should not impose license cancellation in cases where the failure to receive the FCC's inquiry was the result of a mailing problem,[38] whether electronic or e-mail.[39]

By way of example, the FCBA notes that many licensees, eager to demonstrate their compliance with the agency's construction / coverage requirements may provide that information voluntarily to the agency, well in advance of the actual deadline. Thus, when a subsequent inquiry notice arrives from the FCC, the licensee may reasonably believe that a response is not required. Similarly, the FCC's inquiry letters are often generally phrased, and do not account for individualized circumstances, such as operations from temporary locations, granted extensions of time, etc. Licensees are often confused by the agency's correspondence and contact the agency or counsel for clarification, not knowing that the allotted time period for a response continues to run

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[38] The FCBA proposes that the agency attempt to contact the applicant's contact representative by telephone in the event that the inquiry letter is not received due to a mailing address problem.

[39] Thus, the procedural issue should work both ways. If the licensee's failure to receive an FCC notice is no excuse for failure to timely construct, then the failure to receive a notice should also not automatically be construed to mean that a licensee has not constructed.

without regard to the licensee's clarification attempts. A licensee's written request to the agency for clarification may not be answered for several months. Accordingly, the Commission should not cancel a license based solely on a lack of construction verification. Only after a determination has been made that substantive non-compliance with the construction/coverage requirement has occurred should the agency terminate the authorization.

E. Change to NAD-83 Datum

The Commission proposes to require that all geographic coordinates contained in applications for the continental U.S. and Alaska be provided using NAD-83 datum. NPRM at ¶ 70. The FCBA supports this proposal, but urges the Commission to deal carefully with situations where "rounding" of the data causes discrepancies.[40] In addition, because many FCC licensees utilize existing FCC and FAA tower records to obtain site data, the FCBA urges the Commission to require NAD-83 datum only if it also updates its tower registration database to reflect this important change. Currently, the antenna registration form, FCC Form 854, permits licensees to use either NAD-27 or NAD-83 datum. Accordingly, the FCC should not expect licensees to conform to a new system that it does not require tower owners to conform to as well.

Conclusion

As is discussed above, the proposed ULS system, while offering great promise of improved filing efficiency and access to FCC records, poses considerable challenges as well. For the foregoing

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[40] Some coordinates in the FCC's database may have been already been rounded and converted to a different NAD datum. Thus any further rounding or datum translations could result in incorrect coordinates. The FCBA recommends that the FCC require licenses to verify their coordinates during the data base review process discussed in Section A.

reasons, the FCBA supports the Commission initiative but recommends that the FCC "proceed with caution" in implementing the most revolutionary change in its filing procedures in its history.

Respectfully submitted,

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May 22, 1998